

General Information Letter: There is no statute of limitations for offsetting a refund against an assessed liability.

May 18, 2005

Dear:

This is in response to your letter dated May 13, 2005, in which you request advice. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is [www.revenue.state.il.us/legalinformation/regs/part1200](http://www.revenue.state.il.us/legalinformation/regs/part1200).

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

On behalf of the referenced taxpayers, I am writing about the Department's notice dated April 11, 2005 (a copy of which is enclosed).

In that connection, the taxpayers dispute the taking of their 2004 income tax refund, for application toward the alleged 1982 income tax liability. Any such remaining liability should be barred by the statute of limitations. 35 ILCS 5/1101; 35 ILCS 5/1104. Consequently, the taxpayers request that their 2004 income tax refund be restored. See enclosed copy of my letter of even date.

Similarly, the Department seized their 2003 income tax refund, for application toward the alleged 1982 income tax liability, which taxpayers disputed. Enclosed is a copy of my letter dated July 14, 2004 (with its enclosures). Again, taxpayers requested that their 2003 income tax refund be restored; which request apparently fell on deaf ears, because alleged 1982 debt was referred to outside collection agencies.

Upon receipt and review of the foregoing, please advise.

Your position is based upon an erroneous presumption. There is a different statute of limitations for the assessment of tax than there is for the collection of assessed and unpaid tax. The general statute of limitations for assessing tax liability is 3 years from the date the return was filed for a given taxable year. Illinois Income Tax Act (IITA) Section 903(a) 35 ILCS 5/903(a).

The Department has several remedies available to it for the purpose of collection of assessed and unpaid tax. One such remedy is foreclosure of a lien. An unpaid and assessed tax liability results in a lien against "all property and rights to property, whether real or personal" in favor of the State against

the taxpayer. IITA 1101(a). The Department has up to 3 years from date of finalization of assessment, or from date of filing of a return showing a liability and un-accompanied by payment, to perfect its lien by filing a notice thereof. IITA 1101(d). Once the lien is perfected by such filing, it remains valid for 20 years from the date thereof. In addition, under IITA Section 1109, the Department may levy upon the property and rights to property (real, personal, tangible or intangible) of the taxpayer for up to 20 years after the latest date for filing the aforementioned notice of lien (under IITA 1103). Thus, the Department's remedy of enforcing its lien for unpaid tax can conceivably extend for as long as 23 years, and the right to levy likewise as long. On top of that, IITA 902(c) gives the DOR the same period in which to bring a collection action in court. Refunds due to your clients for 2003 and 2004 would fall within 23 years from the date the lien arose: April 15, 1983, when the return was filed for taxable year 1982.

Even if the time for executing a levy or commencing a collection action had expired, the Department was within its legal rights to apply your clients' refunds for the years in question against their outstanding liability for 1982. IITA Section 909(a) specifically provides:

909 (a) In general. In the case of any overpayment, the Department may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, regardless of whether other collection remedies are closed to the Department on the part of the person who made the overpayment and shall refund the balance to such person.

Essentially, there is no statute of limitations regarding the Department's remedy of offsetting a taxpayer's refund against a prior liability. As a result, the Department acted correctly. Furthermore, it can and likely will continue to offset any future refunds attributable to these taxpayers until the remaining 1982 liability has been satisfied in full.

Please advise your clients accordingly.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of 2 Ill. Adm. Code Part 1200.

Sincerely yours,

Jackson E. Donley,  
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